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PRINCIPLES OF MUNICIPAL ORGANIZATION

Whatever disagreement there may be about the cause, it is generally agreed that American municipal institutions work badly. As Professor Bryce has said, "There is no denying that the government of cities is the one conspicuous failure of the United States," and although it has been fifteen years since "The American Commonwealth" was published,—years full of effort and experiment in municipal government,—the remark is still as true as when first uttered. Progress has been made, improvement has been effected, but the normal tendency of American municipal institutions is towards corruption. Efforts for the improvement of city government are now being conducted chiefly upon lines which imply institutional failure. The prevailing opinion is that the best results are to be accomplished through agencies of supervision and control extraneous to the organization of municipal government and influencing its operation by moral influences. It is an era of civic leagues and reform associations. Their activity is upon the whole beneficial, but as a regular system it means civic betterment by intimidation of the government as organized by law, so as to counteract the normal tendency of the constitutional system. The problem which must be solved in arriving at correct principles of municipal organization is what gives rise to this normal tendency towards corruption.

Commonplace though the statement be, yet it seems necessary to reiterate the principle that for every effect there must be a proportionate cause, since only by grasping that principle firmly and applying it unflinchingly can we hope to solve the problem. Our failure in municipal government has certainly not come by chance; we can at least be sure that there is in it a sequence of causation. Taking this as the starting-point, discarding all other assumptions, renouncing so far as possible all prepossessions, and ignoring if we can our inveterate political superstitions, let us try to work out the problem in as cold blood as if it were a proposition in mathematics.

The cause of the failure must be either: (1) Defect of character in the people, or (2) Defect in the organization of government.

Defect of Character in the People

(1) There is a great weight of authority in support of this hypothesis. Professor Bryce himself inclines to it. While criticising the organization of municipal government in this country, he remarks that in "the growth of a stronger sense of civic duty rather than in any changes of mechanism, lies the ultimate hope for the reform of city government." This is the theme of endless admonition and exhortation, and there is an immense literature dealing with the subject from this point of view. The specifications may be grouped under these general heads: (A) Levity of national character; (B) lack of public spirit; (C) the vileness of local politicians; (D) the spirit of Commercialism; (E) the natural outcome of democracy.

A and B form the hypothesis which gives rationality to the movement in favor of public administration of all municipal utilities. As matters stand the logic of that movement seems to be that because municipal authority does badly what it now has to do it should be intrusted with as many more things as possible. The movement, however, assumes that present incompetency is due to popular neglect and indifference, and that when public interests are given overwhelming importance public opinion will be roused into the needful activity to see that they are properly managed.

The same hypothesis is favored by European critics, who are so impressed by striking evidences of our national strength and efficiency that they feel bound to conclude that our failure must be ascribed to lack of will rather than want of capacity. The *London Spectator* recently offered this explanation in an article entitled "What is it that makes Tammany possible?" published in its issue for November 14, 1903. It finds the explanation of Tammany's triumph in sheer levity of character and exuberance of optimistic spirit. "For some Americans things simply cannot go wrong. Whatever happens, the result will 'pan out' all right. A nation so optimistic, so ready to pit its own energy and talent against any and all obstacles, naturally becomes careless of obstacles. It will even set them up to knock them over again." The particular case was an unfortunate selection, as four-fifths of the New York City electorate are of foreign parentage, but in no case is there any satisfactory evidence in support of the hypothesis. To deny that such levity of

character exists would merely meet assertion with assertion, and it is not a point upon which proof can be offered, but every one must judge for himself. My own opinion is that the general feeling is rather one of despair than of easy confidence, and that affairs are as they are, not because the people of afflicted communities are indifferent, but because they cannot help themselves. But even admitting that levity of character is an American characteristic, why should it be so invariable in its consequences and those consequences produce characteristic effects in government alone. In other fields results due to inattention and carelessness are sporadic and do not produce settled characteristics. There is a great variety of age and circumstances in American communities, and it would be entirely against the doctrine of chances that everywhere municipal government should tend towards waste, inefficiency, and corruption, simply as a result of levity of disposition in the American character as regards this particular kind of government.

A consideration which is conclusive on this point is the difference which exists between the United States and Canada as regards the characteristics of municipal government. Doubtless people acute in such things may trace differences between the average Canadian type and the average type of citizen in the United States, but any one crossing the border experiences no more sense of change than in passing from one State to another in the Union. He sees the same sort of people in looks, dress, and speech. The country is just as new as the United States and is just as intent upon material concerns. So far as public spirit is concerned, one of the things that surprises an inquirer is the absence of the civic leagues and reform associations which abound in the United States. There is a conspicuous absence of the fuss and worry about local politics that are found everywhere in the United States. If the municipal government took its tone directly from the popular disposition, it might fairly be expected to be pretty much the same as in the United States, if not rather worse along the same lines. As a matter of fact, it possesses altogether different characteristics and occupies a much higher plane. The notion that the peculiar characteristics of American municipal government are due to levity of national character has really nothing to support it.

The charge of lack of public spirit is more plausible, for it must be admitted that the class of citizens who are best qualified to ap-

preciate and discharge the public obligations attaching to membership in City Councils or office under the city government hold aloof from such positions. This, however, may be due not to lack of public spirit, but to special conditions attaching to municipal office, making it repugnant to men of dignity and independence. That the latter cause is the true one will be admitted by those who are conversant with the facts of the case, and it is further attested by the fact that there is no difficulty in getting men of character and standing to undertake other public employments. The churches, reformatories, and charities of the country are, as a rule, managed by unpaid trustees actuated by a sense of duty. Associated effort for the advancement of public interests is a marked feature in the life of every community. Upon a broad survey of the facts of the case we must conclude that instead of a lack there is rather an excess of public spirit in this country fraught with some peril to the home life of our people. The truth appears to be that public service exerts a more extensive attraction upon the mass of society than in any other country, exciting a vast and varied amount of private activity in behalf of public interests.

The Wickedness of the Politicians

C is the cause usually assigned in local discussion of local conditions and constitutes the working theory of journalism and of civic leagues. One who makes inquiry among the people of any community as to the cause of the misrule of which they complain has dinned into his ears scornful and indignant or cynical and humorous accounts of the vileness of the local politicians. The remedy advocated by the newspaper and the civic leagues is summed up in the well-known formula, "Turn the rascals out," with the difference that while the newspapers generally make a partisan application of the principle, the civic leagues strive to ignore party lines and base their recommendations upon the personal merits of candidates as individuals. Consideration of this hypothesis need not detain us long, for despite its general acceptance it collapses at the touch of logic. The politicians are as much an integral part of the community as any other class of people in it, and if the politicians are vile it must be because political conditions select and promote vileness. The correct principle applicable to such matters was laid down by Burke when, refusing to join in the personal abuse levelled

against the Bute ministry, he said, "Where there is a regular scheme of operations carried on, it is the system, and not any individual person who acts in it, that is truly dangerous." The public business is not differently circumstanced from any other business in that it must work with such material of character, good, bad, and indifferent, as it finds in its operations, and it selects to its service such as meets its actual requirements. The misfits are eliminated, the suitable retained. It may be laid down as a principle of universal application that the typical characteristics of any business pursuit or professional occupation are the result of the conditions under which its activities are carried on. The notion that the general vileness of municipal politics is due to a fortuitous concurrence of bad men in the business of municipal government is so puerile that its prevalence is somewhat difficult to reconcile with the practical common sense of the American people in other respects. Time and again, with great fuss and fury about smashing the ring and turning the rascals out, a change of administration is effected that simply carries on the same old game with a new set of players. The probable explanation of this obtuseness is that in ordinary business affairs administrative authority implies control of methods, so that individual candidacy embodies systematic reform, a new management having discretionary authority to make such changes as may be necessary to accomplish the results for which it will be held responsible. In municipal business no such discretionary authority as to organization exists anywhere. In its main features the system is fixed by the State, and administrative activities cannot control conditions but must conform to them.

The Spirit of Commercialism

D is the favorite hypothesis of a class of critics whose logic is sufficiently acute to discern that the typical characteristics of local politics are primarily a result rather than a cause, and that for a result so general and constant there must be a cause as general and constant. The spirit of commercialism appears to meet the requirement, and in a work which advocated this view with such brilliancy of rhetoric as to attract a great deal of notice it was asserted that the demoralization of local politics might have been predicted as the natural consequence of the growth of commercialism. The operation of this influence was traced in detail, with practical instances of

its manipulation of elections and of the conduct of local agencies of government. That there is in fact a vast system of this character underlying and influencing the operations of public authority will be doubted by no one who is acquainted with the interior working of local politics. Exertion of influence of such character may be said to be a regular department of activity in the organization of extensive commercial interests, particularly such as make use of public franchises. The existence of this agency of corruption does not, however, necessarily prove that it is the primary cause of the vile tendencies of municipal government; it, too, may be essentially a result rather than a cause, a response to conditions which it did not create, although it may be intensifying them, and thus acquiring a secondary causative influence of formidable magnitude.

In essential character the supposition is like that previously considered, and is indeed simply an extension of the same idea. Instead of the proposition that local politicians happen to be a bad lot in this country, the more general proposition is advanced that American business men as a class are a bad lot, and their badness penetrates the conduct of local politics, generating corrupt tendencies. But it may be urged that the reasoning used to discredit the previous hypothesis is now inapplicable because the present hypothesis assumes a general condition of which the corruption of local politics is a symptom, so that from this point of view the failure of municipal institutions ceases to be an isolated phenomenon. That the conduct of the public business should be so markedly inferior to the conduct of private business, is explained by the fact that, in the business world the influence of the prevailing spirit of commercialism is counteracted by motives of self-interest, whereas in the political field it operates upon trusteeship whose integrity it undermines. The hypothesis is further strengthened by notorious facts indicating that the commercial spirit exerts a like influence upon trusteeship in general when the details of transactions can be covered up in a way to seclude them from ordinary business knowledge and insight. It must be admitted that the hypothesis is better supported and has more consistency than any other so far considered.

Conceding for the sake of the argument, that in this country the spirit of commercialism has predatory characteristics which have obtained peculiar prominence, yet there are plain indications that in the general field of social and business interests a remedial prin-

ciple is at work. While unscrupulous plungers have made big hauls by methods essentially fraudulent, yet energetic reactions are incited which stigmatize such activities and reduce their scope. Hence the predatory characteristics of commercialism are always most prominent in the new fields opened from time to time in the course of economic development, in which business activities operate under conditions whose nature is not as yet fully apprehended by the public. Conditions become purer as they become definite and permanent. There was a period in the development of transportation methods when the rapid introduction of new conditions of control and management afforded opportunities for defrauding investors which were unscrupulously utilized. Such abuses of trust are no longer prevalent in that field; they now most abound in the process of industrial reorganization which forms the latest phase of economic development, but reactions that are tending to repress them are manifestly at work. The predatory characteristics of commercialism, even when most active and influential, appear to be abnormal and transient. Commercialism when regularized tends to accord with the general ethical tone of the community, except in the field of politics, a fact which plainly indicates that the marked difference which exists is the result of special conditions existing in the field of politics. If the conditions are such that business affected by the administration of public affairs can be carried on only by sordid conspiracy with political power, the relations of business and political interests will take that shape and keep that shape. Hence while the fact is undeniable that commercialism pursues corrupt methods in dealing with local government, the same excuse is applicable which Macaulay gave in the case of the system of corruption by which parliamentary government was carried on by Whig ministries in Walpole's time: "They submitted to extortion because they could not help themselves. We might as well accuse the poor Lowland farmers who paid blackmail to Rob Roy of corrupting the virtue of the Highlanders, as accuse Sir Robert Walpole of corrupting the virtue of Parliament."

The Working of Democratic Institutions

E. That the corruption of local politics is the natural outcome of democratic institutions is the explanation one is apt to get in private talk with party managers. It is not propounded as a theory,

but frankly recognized as a condition which must be dealt with on the principle that what can't be cured must be endured. Good and bad go together in most of the affairs of life, and democratic government is no exception to the general rule. It is in the main good, because it secures attention to the wants and desires of the common people, but at the same time it subjects the transactions of government to the play of their passions and appetites. Despite the railing of purists and idealists, the general result is not so bad; the public business in one way or another does get on and social interests are tolerably well protected. It is true that a great deal of grafting goes on, but if there is a strong boss and a solid machine it is kept within bounds and business interests can know just what they can depend upon. It costs a great deal of money to run politics, and in one way or another the public offices must meet the cost of filling them under the system of popular election. The best and really cheapest way of treating the problem is through the boss system, which controls the selection of candidates and determines public policy by putting it upon a business basis.

This opinion is held not only by party managers but also prevails among hard-headed business men who face the facts as they find them. They support ring rule as a practical necessity; that is to say, they believe that some sort of a firm political control superior to and exercising authority over the regular constitution of municipal government is necessary to prevent the government from being simply almoner and pander to the mob, and to make it considerate of business and social interests about which the ordinary run of people know little and care less. Unless there is a boss, government lacks consistency and purpose; there are no settled conditions upon which enterprise can rest; no competent authority with which business interests can negotiate. The occasional interregnums which occur between the downfall of one boss and the rise of another are always a period of political demoralization and contention. While not enunciated as a distinct principle, yet the tone of comment one hears in discussion of municipal politics among practical men of affairs implies that corruption is the natural defence of society under democratic conditions of government.

It must be admitted that close contact with actual conditions is apt to lead to practical conclusions of this kind. No one who ever knew a boss as he is can doubt that he constantly acts under stress

of circumstances which he did not create and which his disappearance would not remove. The individual boss frequently disappears; the boss system remains and is a normal characteristic of American municipal politics. The combinations which the boss makes and by which he maintains his ascendancy are his own, but he must play the game on the board and with the pieces he finds. I have heard a boss speak in tones of unfeigned scorn of city councilmen who were reputed to be his own agents. When asked why he took up with such people, he described the posture of politics in their wards to show that in joining interests with them he had done the best he could under the circumstances. The poor material furnished by the workings of local representation is not unfrequently a subject of remark in the private talk of a boss, but without complaint, for it is the characteristic of the type and the secret of its strength to respond with simple directness to actual conditions, and to base measures on the realities. It is proof of great efficiency of character when a boss is able to maintain himself upon his slippery throne.

The notion that democratic politics are necessarily vile has abundant philosophic support. It pervades the *Federalist* and was fairly rampant in the convention which framed the Constitution of the United States. If one consults Calhoun's analysis of the tendencies of "the government of the numerical majority," his prophecy seems startling in its accurate anticipation of the present evils of our politics. As an exercise in dialectics it would be possible to produce a copious thesis in support of Talleyrand's cynical definition of democracy as an aristocracy of blackguards, but there would be a fatal flaw in the argument. For one thing, the marked difference which exists in this country between national and municipal administration, which have a common base in the character of the people, would not be accounted for. Dialectic skill might perhaps get around that, but the working of democratic institutions elsewhere furnishes facts absolutely irreconcilable with the thesis. If corruption is a character mark of democracy, why is it not displayed in the municipal institutions of Canada, England, Switzerland, and Australia? They are far more democratic than those of this country; the policy of government is immediately subject to popular control; checks which we think necessary to guard against results of popular impulse do not exist; mayors have no veto power and all power is amassed in the city council, but there is no boss system,

no machine to run the administration, and honesty is the normal characteristic of the system. Although there is complaint as to the character and tendencies of municipal government, it does not relate to integrity of administration but to its scope and purpose. That democratic government should be successful in securing a faithful stewardship of public resources is assumed as a natural consequence of the system; where it works badly is in the ideas it engenders of the social application of these resources, and some alarm is expressed as to the results of the tendency of municipal government to enlarge its functions. Not content with managing markets, water supply, lighting, and street railways, it is taking on lodging-houses and even dance-halls. While I write this article I notice in the *London Times* a report of the opening of a fine new municipal building at Cheltenham at a cost of \$50,000, which the *Times* says is "to answer in every respect to the social requirements of the town." It contains a hall that will accommodate 2500 people, the floor of which has been especially constructed on girders and spiral springs for dancing. It is stated that "there are also large drawing- and supper-rooms, with refreshment-, smoking-, and card-rooms." Sir Michael Hicks-Beach, ex-chancellor of the exchequer, spoke at the formal opening. In the course of his remarks he said:

"Every man here on his first election as a town councilor must feel that, above all things, it is incumbent on him to do what is vital to the prosperity of your town in maintaining and increasing its attractions to the public. It is for this reason that your town council and their predecessors have spent large sums in widening your streets to allow for the increase of traffic, in founding and maintaining various kinds of municipal institutions, in providing public gardens and winter gardens, in establishing electric lighting, and last and greatest of all in that sanitary work in which you, Mr. Mayor, have taken so prominent and so able a part, and in securing for Cheltenham an admirable and sufficient water supply, at a cost, I believe, of something more than half your whole municipal debt. All these are works of necessity, absolutely works of necessity."

Commenting upon the address, that strong and influential financial journal, the *London Economist*, condemned the alleged reaction against municipal trading, socialism, or whatever it may be called, and the reason it gives is particularly interesting as regards the subject under consideration. It says:

"We look upon municipal institutions as providing, to a large extent, the very salt of English life. We are, therefore, frankly glad to see the cordial way in which Sir Michael Hicks-Beach pays tribute of honor to those who, for no salary and for very little glory, accept the often very irksome burdens connected with membership of county, city, and borough councils, and recognizes that it is well for them to take a large and liberal and not a poor and contracted view of their functions."

Such facts are absolutely conclusive on the point that the low character of American municipal government is not the normal outcome of democratic government. If that were so there would be some evidence of the same character in the more democratic institutions of England, and Switzerland, and on the contrary they excel so conspicuously in integrity of administration that this characteristic is fully conceded even by critics who see danger in some of their tendencies.

General Observations on the Character Theory

We have now passed in review every hypothesis embodying the idea that the failure of this country in municipal government is due to defect of character, and have found each inadequate to explain the phenomena. Before leaving this branch of the subject some general considerations are in place. It is doubtful whether there can be such a thing as inadequacy of popular character to sustain fit government. If a people are left to their own devices, it seems to be a necessity from the constitution of human nature that local institutions will conform to popular disposition, although there does not appear to be any essential connection between the real worth of local administration of government and the attitude of popular sentiment. Orientals live contentedly in dirt and squalor, and are apt to regard as an outrage the imposition of sanitary regulations or other exertion of public authority to better conditions, while they view with satisfaction displays of magnificence on the part of their rulers which to Western ideas appear to be senseless waste and injurious extravagance. Then, too, there are countries veneered but not really informed by civilization, whose condition is one of social disorganization and hence chronic political instability, in which gross corruption and incapacity of local government coexists with a habit of bawling patriotism which claims for institutions moral superiori-

ties which do not exist and which extenuate defects which are too patent to be denied. Neither praise nor blame of the character of institutions is proof or disproof of real merit, but where there is chronic dissatisfaction it is at least proof that institutions of local government have not taken shape in accord with the popular character and in adaptation to its normal motives, but that they are essentially an imposition. If the principle of authority is that of self-government, the existence of such chronic dissatisfaction is evidence that the machinery of government is not adjusted to the force which moves it.

Looking at the matter from this point of view we may be able to perceive the fallacy contained in a proposition frequently advanced in regard to municipal government,—namely, that since in this country the people rule they must put up with the consequences if they happen to be bad; that the stream can rise no higher than its source, and hence it must be affirmed that on the whole the people are getting the kind of government they deserve. If they want better government, let them make better government. There is a degree of truth in this, as regards government in general and viewing the character of a people as inclusive of their traditions, beliefs, ideas, and political superstitions, but it is true only in the general sense that government of every kind, no matter how despotic or how liberal, is founded upon public opinion. As regards municipal government in the United States it is almost wholly untrue and altogether misleading. Suppose the shareholders of a railway or business corporation were subjected to by-laws which require them to elect the general manager, the board of directors, and various division chiefs as distinct and separate authorities debarred from even transacting business together! If the affairs of the concern were in a chronic state of demoralization and mismanagement, would it be argued by any sensible man that since the shareholders had the power to choose whom they would to serve them they had no right to be dissatisfied with results? Such a situation would certainly be taken as evidence of defective principles of organization, preventing the shareholders from establishing effective control. What possible reason can there be for reaching any different conclusion if the corporation happens to be a municipal corporation. The situation may be evidence of chronic stupidity, or of unreasoning acquiescence in

traditional forms of procedure, or of blind subjection to political superstitions, but it affords no proof of ethical deficiency.

Defect in the Organization of Government

(2) We now take up the second branch of the inquiry,—namely, the possibility that the cause of failure may be defect in the organization of government. On first thought it might seem to be impracticable to submit this hypothesis to the test of facts, so many experiments have been tried in municipal charters and so many varieties exist. Upon this score alone one might feel justified in rejecting the supposition off-hand, since if the trouble lay in defect of organization surely it would have been gotten at in the course of so much anxious effort. We are, however, bound by our plan to discard all assumptions and to proceed with scientific precision. Since American varieties of municipal government unite in common failure, we need not consider them in detail. Whatever the cause may be, it is generic. Furthermore, we must conclude that this generic cause will manifest itself as a generic difference when American municipal government is compared with municipal government in other civilized countries. Now when the comparison is made, what generic difference appears? Nearly all cities here and abroad have their own peculiarities, and a survey of the general field reveals great variety of organization. The only difference which appears to be generic is this, that whereas everywhere else the executive and legislative departments are connected, in the United States they are disconnected. It further appears that whatever evils or defects may accompany the connection of the executive and legislative departments in one organ of municipal sovereignty, the boss system is unknown wherever that principle of organization obtains, no matter in what country we look for examples. It is a phenomenon characteristic of and peculiar to municipal government organized upon the principle of separating the executive and legislative functions by embodying them in distinct organs of authority. The logical conclusion is that the principle of corruption in American municipal government is this disconnection of the executive and legislative functions.

On reaching this conclusion one instinctively revolts from it, because it seems to attack the fundamental principle of American constitutional law,—the principle of the separation of the powers of

government. Moreover, one finds that the idea which pervades theories of municipal reform is the necessity of sharper division and more effectual separation of the executive and legislative functions. This idea is the cardinal principle of reform advocated in the municipal programme adopted by the National Municipal League, and so high an authority as Professor Goodnow argues that it is a principle based upon the laws of psychology, governing all conscious activities. It would seem to be a supposition too monstrous to be entertained that the whole theory upon which American institutions of government are founded is malign, and that the anxious studies of reformers have so grievously miscarried as to prompt them to select the fundamental cause of corruption as the cardinal principle of municipal organization. But, on the other hand, the conclusion in which our inquiry has resulted has been reached by logical inference, so that the need is suggested of close scrutiny to determine whether the apparent conflict really exists.

Separation of the Powers of Government

What is meant by the separation of the powers of government? If it means simply that the executive, legislative, and judicial powers shall be separately constituted, there is no radical divergence between American institutions and those of other civilized countries. The generic difference which has been noted lies in this: outside of the United States it is the practice to join together in one organ of government and thus indissolubly connect in their operations the separately constituted powers of government; in the United States it is the practice not only to constitute these powers separately, but also to disconnect them in their operation by embodying them in separate organs of government. For instance, in Toronto the people elect a mayor to be head of the executive government; they also elect a board of controllers upon a general ticket to represent the community as a whole, and in addition members of the city council are elected in every ward to represent the interests of locality. Each of these separately constituted bodies have their special powers and functions which are sharply defined, but they meet and act together as the city council, the organ of municipal sovereignty, whose determinations are final and conclusive. The mayor presides, but he has only his own vote, and has no veto power. He does not even appoint the committees, that being the province of the ward repre-

sentatives; but the mayor is *ex officio* a member of the board of controllers and of every committee. The controllers, as representatives of the community as a whole are the medium through which the reports of council committee are submitted to the city council, and the recommendations of the controllers form the subject of legislative action. All appointments to office in the service of the corporation are made by the nomination of the mayor and controllers subject to the approval of the city council. At every point in the organization of the city government the executive and legislative functions, while separate and distinct in constitution, are connected so that they operate as a reciprocal control. While the means by which the executive authority and the legislative authority is separately constituted varies in different countries, the usual English and Swiss practice being to form the executive administration through the action of the legislative body, yet the two functions are always sharply distinguished and separately constituted, but are at the same time invariably connected.

In the United States the authority of the mayor is not only separate and distinct from that of the legislative branch, but is altogether disconnected by being made also a separate organ of government. The legislative authority is embodied in the city council, organized as a separate organ of government. In many cities it is divided into two branches so that one may be a check upon the other, and a further check is provided by giving the mayor a veto over the acts of the city council. It is frequently the case that such offices as those of treasurer and controller are separately constituted and independently organized. The process of separate organization is in some cases—as, for instance, in Ohio municipal corporations—carried out to such an extent that important branches of executive authority, such as police control, fire department administration, and the management of public works, are separately embodied.

The Views of the Fathers

The essential difference between the two systems in organic principle is not in the separate constitution of different powers of government, but in the fact that one system connects them while the other disconnects them. Is it contrary to the principles of the separation of powers to connect them? It is generally assumed that it is. While the point was not considered in the discussion attending the

adoption of the programme of the National Municipal League, the tone of the discussion and the recommendations made assume that this principle requires the embodiment of executive and legislative authority in separate organs of government. Nevertheless, there is conclusive evidence that no such assumption was made by the framers of the Constitution of the United States, and, indeed, that it is contrary to their ideas of the meaning of the principle of the separation of the powers. Their ideas are not to be inferred from the relations between the executive and the legislative departments as they now stand in our national government, for, as is well known to students of our constitutional history, they contemplated a much closer connection than that which now exists. It fortunately happens that this very point was discussed in the *Federalist*. In numbers 47 and 48 Madison argues that the principle of the separation of powers "does not require that the legislative, executive, and judiciary departments should be wholly unconnected with each other." Not content with this negative statement of the case, he goes on to say that "unless these departments be so far connected and blended as to give to each a constitutional control over the others, the degree of separation which the maxim requires, as essential to a free government, can never in practice be duly maintained." The profound truth of this observation is conspicuously attested by the present condition of government in this country. Any one possessing insight into actual conditions knows that executive and legislative functions are not really separate in practice. Members of legislature and city councils habitually extort surrender to them of executive function, especially as regards appointments to office, and are enabled to do so because the executive department, being disconnected from the legislative department, has no way of securing consideration of public business save by the favor of members. The same is true as regards the national government also, but presidential authority is a force of such high tension that it tends to establish a regular connection although subject to interruptions which cause jarring vibrations through the whole frame of government. The connection is, however, sufficiently constant to preserve the national government from the system of boss control which is the natural adjunct of state and municipal government. When those functions of government whose concerted action is essential to administration are connected, there is no room for the boss system, and it has never

been developed under such circumstances. The conditions are such that actual control can be developed only inside the formal constitution of government and not outside of it. Hence in the municipal institutions of other countries having fairly representative institutions there appears, instead of the irresponsible boss ruling from the outside by combinations of class interest, the responsible leader basing his control upon the support of public opinion. The variation in the practical application of the principle of separate powers which has such disastrous results in the United States, so far from being constitutional doctrine, is the result of departure from it, and the consequence has been just as Madison predicted,—the destruction of constitutional separation in actual practice.

The Psychological Basis

Let us now proceed to consider the principle itself, to see whether analysis of its nature will enable us to determine how it should be construed. Professor Goodnow has suggested that it has a psychological foundation. He says:

“It is a distinction based upon a sound psychology. In the case of a single sentient being the will must be formulated, if not expressed, before its execution is possible. In the case of political bodies, which are more and more coming to be recognized as subject to psychological law, not only must the will or policy be formulated before it can be executed, but also the very complexity of their operations makes it almost impossible to intrust the same authority as well with the execution as with the determination of the public policy.”¹

Following out this line of reasoning, which is extremely valuable and suggestive, Professor Goodnow distinguishes between the formation of policy, which he regards as the legislative function, and the execution of policy or the administration function, and he concludes that these two functions should be separately constituted in any proper organization of government. “The failure to distinguish legislation from administration” he considers to be the root of trouble in our municipal institutions. The proper connection of these functions is not considered, but the subject is treated in a way which assumes that separation means also disconnection. This as-

¹ A Municipal Programme. The Macmillan Co., page 74.

sumption, moreover, affects the statement of psychological principle which appears to have been unconsciously warped to fit the case. If we consider the volitional process it will be seen that while there is a separation of function it is not exactly such as Professor Goodnow has delineated. A man sees something he would like to buy, doubts whether he can afford it, decides to gratify his inclination, and makes the purchase. The totality of his action is made up of volitional and inhibitory impulses, but his resolution and the execution thereof are both stages of volition. The will participates in what Professor Goodnow designates as the policy-forming function, which, psychologically speaking, is not a function at all, but a process in which the volitional and inhibitory impulses participate in conjunction. The distinction suggested by psychological law is not between administration and legislation, but between administration and control, corresponding to the volitional and inhibitory functions of mental activity, and as those functions meet together in determinations of conduct, so administration and control should be connected in legislation.

If the organization of municipal government outside of the United States be examined, it will be found that it conforms to these psychological principles. Administration and control are separately constituted, but meet together in the city council. In practice, administrative experience furnishes the legislative impulse. The organs of administration conceive and mature the legislative proposals, a process conforming to the psychological law that perception is developed through the agency of special organs. The administration submits its legislative proposals to the city council, representing the function of control, assists deliberation by explanation and advice, and thus determinations of conduct are reached in strict conformity to psychological law, through the interaction of the volitional and inhibitory functions.

We have all about us illustrations of the same principle in the business world. There administration and control are invariably connected, distinguished as the management and the directory, which meet in determination of policy. It is the function of the management to plan the operations of the concern as well as execute them, subject to the approval of the board of directors. Is it a question of entering a new field, adopting new processes, enlarging the plant, providing fresh capital? The management conceives and formulates

the measures and submits them to the board of directors for approval. What may be called the legislative initiative of the management is justly regarded as its most important and valuable function.

If, however, the organic connection of the separately constituted functions of administration and control is a principle founded upon psychological law, it must be immutable in its operation, whether or not it be recognized or provided for in the intentional structure of government. Although the generic type of American municipal institutions violates that principle, yet if the principle is sound the actual operations of government should conform to it. That is invariably what we do see if able to see things as they really are. The vital principle of the boss system is that it furnishes this connection between the executive and legislative departments. It has grown up in satisfaction of practical necessities of government, and it is peculiar to our institutions because they disconnect what must in some way or another be joined in carrying on administration. This is the secret of the normal tendency of municipal government towards corruption; it is so constituted that it cannot be carried on without corruption. In the national government this tendency is mitigated by the fact that executive authority has escaped the disintegration to which it has been subjected in State and municipal government. Functions which in the latter are separately constituted are in the national government united in one executive authority, making it so massive that it attracts legislative initiative despite the formal disconnection, and "the policy of the administration" is ordinarily the informing principle of legislative activity, but in this field also defect of regular connection is the source of continual evil.

The Course of Improvement

In further illustration of the operation of this principle despite failure to recognize it, observe that such reforms of municipal government as have resulted in real improvement have really connected the executive and legislative powers. The New York and Baltimore city charters are typical examples of this process. Both the formulation of public policy and the execution of public policy have been concentrated in the executive department which fixes the tax levy, frames the appropriations, determines the conditions and terms of legislative grants, and in general decides upon ways and means. A pretence is made of retaining the usual disconnection through the

separate organization of the city council, but it has become an atrophied organ of government. While there is a formal reference to the city council of the determinations of the governing body, yet its authority is so reduced that all it amounts to is a limited veto power. It has become the practice of the New York city council to treat its authority frankly as such, allowing appropriations to become law by lapse of the time in which the city council has power to act, and interfering only for the purpose of negating some particular appropriation when exertions of political influence temporarily energize council proceedings. The practical benefits of the system causes its violation of traditional theory to be ignored. The enormous gains it makes for the public in the granting of franchises has excited general notice and has stirred up angry agitations for like benefits in other cities, which, however, they will never secure until they adopt like methods. These gains are essentially economies introduced by dispensing with the boss and the machine as the basis of administrative connection. By abolishing their office, its emoluments have been turned into the public treasury. There is, however, a principle of evil still at work, in that the system, although a vast improvement over the old one, aggrandizes the administrative function at the expense of the function of control, which, lacking adequate expression in the organs of government, tends to pass outside of them to become part of the inorganic mass of public opinion, confused with popular prejudice and ignorance, operating blindly and spasmodically upon the conduct of government, and exposing it to violent alternations in character and tendency.

Summary of Conclusions Reached

In view of all these considerations, we must conclude that the truly remarkable thing about American institutions of government is not that they work so badly as that they should work so well. Owing to misconceptions which have hardened into political superstition our institutions have been subjected to conditions violating principles of government universally recognized and usually correctly applied except in the administration of public affairs. That with such defective organization a tolerable degree of administrative efficiency has been secured, is the strongest possible proof of the great capacity of American character. This opinion is corroborated by the weighty authority of Bagehot, whose writings evince

a rare combination of business sagacity and political insight. He remarked: "The Americans now extol their institutions, and so defraud themselves of their due praise; but if they had not a genius for politics, if they had not a moderation in action singularly curious where superficial speech is so violent, if they had not a regard for laws such as no great people have yet evinced, and infinitely surpassing ours, the multiplicity of authorities in the American constitution would long ago have brought it to a bad end."² The particular reference is to the organization of the national government, but it applies to all our institutions of government. The chief agency of the moderating influence which makes actual results enduring is that very spirit of commercialism against which sentimentalists are in the habit of inveighing. It establishes connections of interest which enfold the organs of government, and while it imparts to government a plutocratic character it interposes defences against disorder. When our institutions are imitated by countries in which the spirit of commercialism is not sufficiently developed to acquire political ascendancy, chronic disorder is the result. In this way our political example has been a source of immense mischief in the politics of Central and South America. For the same reason, municipal institutions of the American type introduced into Porto Rico and the Philippines, where the commercial spirit is not strong and masterful enough to govern by corruption, will tend to generate fraud and violence as their political adjuncts. This may be asserted with the certainty of scientific deduction.

The results of our extended inquiry may be summarized as follows: The bad operation of American municipal government is due not to defect of popular character, but to defect in the organization of government. The organic defect lies in the fact that the executive and legislative departments, in addition to being separately constituted, are also disconnected, and this very disconnection has prevented in practice the degree of separation in their functions which their integrity requires, a consequence precisely what Madison predicted if separate powers are not duly connected in their operation. The remedy is therefore to be found in establishing a proper connection between the executive and the legislative organs of government, so as to make the functions of administration and control coextensive. No arrangement can secure this short of one

² The English Constitution. Walter Bagehot. Chapter VIII.

which gives the executive department complete legislative initiative, and at the same time secures to the legislative department complete supervision over all administrative transactions. If this be accomplished, nominal relations or divisions are unimportant.

A Municipal Programme

The practical question now presents itself, How are correct principles of organization to be applied to municipal government? Government is a living thing, whose growth may be conditioned but not determined by statute. All that can be beneficially attempted is to introduce correct principles of organic activity, and these should be as simple as possible and should innovate as little as possible. Existing material should be utilized, and surprising as the statement may seem, considering the usual clamor against politicians, displacement of existing political interests should be avoided. If the principles of organization are sound, their ordinary operation will gradually purge conditions and supplant irresponsible boss rule by responsible leadership. The following is a sketch plan, having in view the division of the city council into two branches, which is a common feature of municipal organization in the United States:

The second branch should be elected at large.

All business requiring the concurrent action of both branches should be transacted in joint convention. The mayor, or such person as he may designate for the purpose, should preside. Such officers of the city government as the mayor may designate from time to time, or whose presence shall be requested by the city council, should attend the sessions, with the right to address the chair.

The mayor should have the power to introduce measures and fix a time at which the vote shall be taken, and when that time has arrived the city council should not be capable of transacting any other business until the vote has been taken and recorded.

No appropriation should be made except upon the recommendation of the mayor, save by a two-thirds majority of the city council.

Any measure proposing an expenditure of public money or the performance of any executive act, before consideration by the city council should be referred to the executive department concerned for a report upon its advisability.

No measure proposing a grant of the use of the streets or other public property should be considered by the city council until it has

been referred to the executive department, which shall give public notice of a hearing in regard to it, and after diligently seeking information as to the value of the grant, shall report upon the same to the city council, fixing the terms and conditions, which shall not be altered except with the consent of the executive department.

No ordinance should be considered by the city council until the draft has been approved by the law department of the city government, and any amendment by the city council should be put in the form of instructions to the law department to embody the desired change in the draft of the ordinance.

The scheme separately constitutes executive authority, general representation, and particular representation, and connects them in the transaction of public business. It is a common practice now to require certain business to be acted upon in joint convention. The greatest innovation is that of making the mayor the presiding officer, but that seems necessary in order to connect executive and legislative authority, without which the function of control is impoverished. It would probably be resisted as an inordinate increase of executive authority, but in reality it will add to the responsibilities rather than to the powers of the mayor. The head of the executive department is from the nature of its function an essential branch of the legislature, and should be dealt with as such. This was well understood and distinctly stated by the fathers. In the article of the *Federalist* already quoted from concerning the separation of the powers, Madison explains that it is violated only "when the whole power of one department is exercised by the same hands which possess the whole power of another department," and as showing that the new federal institution is not open to that charge he remarks: "The entire legislature can exercise no executive prerogative, though one of its branches constitutes the supreme executive magistracy." That is to say, the president is a branch of the legislature. In the same way, the mayor is a branch of the legislature, and municipal conditions are such that unless he is plainly exposed as such, and connected with the city council as an integral part, his authority is not subject to proper control. This is the defect in the New York City and Baltimore charter scheme, putting the city council out of touch with the city government. The council should be a deliberative body, and that its discussions shall have pertinence and effect it should be confronted by the executive department, just as in all business or-

ganization the general management meets with the board of directors in arriving at determinations decisive of administrative policy. In cities where the city council is but a single body, the mayor and other administrative officers elected upon a general ticket embody the principle of general representation, and should sit as part of the city council.

The scheme is a demarcation of functions based upon the principles of organization which have been discussed, but it may be noticed that the main provisions resemble those contained in the organization of boards of estimate and control, such as advanced municipal charters now provide, but the resemblance is due simply to the fact that those charters have approximated correct principles of organization in devising practical expedients to reach and correct abuses. The organic principles are the same as those upon which municipal government in Switzerland, England, and the various British Commonwealths is founded. Mention of appointments to office is intentionally omitted, as that matter will take care of itself under nearly any method, provided sound principles of organization are introduced into the government. Every system works badly now, because the real power of appointment is taken over by members of the city council who are in a position to exact submission as the price of the co-operation of legislative activity with administrative requirements. But when the administration has a direct and open connection with legislation, so that members can always be confronted with a public responsibility, there is no inducement for such prostitution of executive patronage, and other considerations will govern appointments to office. Moreover, the separation of the powers of government will be such that about all that members of the city council will find to do is to examine and criticise executive acts, or in other words they will exercise the function of control in its integrity. When a vacancy occurs and councilmen are so situated that they cannot get the filling of it, they will be apt to see that whoever does fill it has a good title. Influences are set in operation which raise the standard of public service, even without any special safeguards such as civil service regulations provide. For instance, in Toronto the municipal service is not under civil service rules, but on the contrary it is distinctly provided by law that all appointed officers of the city government "shall be deemed to hold their respective offices during pleasure;" nor "shall

any person be appointed or hold any office or employment for any fixed time." In practice, however, official employment is permanent during good behavior, and vacancies rarely occur. On the other hand a municipal government in which executive authority is confined by civil service regulation is in a desperate plight when "graft" has worked into the public service. The dykes raised against corruption now serve to keep it in, baffling endeavors to expel it. The President of the United States can cut the dykes if necessary, since civil service regulations are simply rules laid down by executive authority and he can alter or amend them in his discretion, but municipal executive authority has no such power.

It should be observed that the introduction of these principles of organization will work no sudden cure, although they will cause immediate improvement. They are not a drug or a physic, acting as a specific against corruption as quinine acts upon malarial fever, but they change conditions in such a way as to affect the practical conduct of government. In adapting themselves to the new conditions political interests will naturally prefer men who can cope with the new responsibilities. Thus the system will exercise both a preventive and a remedial operation, gradually excluding politicians of the old type and substituting a new type. Corruption will be gradually eliminated and the tone of the administration will be brought into accord with public sentiment, both as regards moral purpose and business efficiency. If municipal government did, in fact, mean, in this country, simply the management of municipal interests, we might expect that in actual practice, under such an organization of government, the standard of public service would tend to become rather higher and more exacting than that which exists in private employment, from the peculiar honor and esteem which attach to achievement in behalf of the public welfare. But there are certain limitations arising from the very nature of these principles of organization which should be considered.

Limitations upon Municipal Efficiency

In considering the nature of these principles an analysis was made showing that they were based upon the psychology of volition. That is to say, an organization of government embodying these principles provides the collective personality of the community with fit organs for the expression of its will, but what that will may

be is determined by the character of the personality. Institutions are purely instrumental in their operation. Now, if municipal government is simply a business proposition, then participation in it should be confined to those who have an interest in the business, just as control of the affairs of a business corporation is vested in the shareholders. Thus municipal suffrage stands upon a different foundation from political suffrage. This is a distinction habitually recognized in other countries and habitually ignored in the United States. In Toronto, for instance, the shareholder idea of municipal suffrage is strictly adhered to, so that in this field there is no distinction of sex, and a woman, if an individual rate-payer, has a vote because of that fact, just as a woman who has stock in a business operation has a vote in the election of its officers. Municipal suffrage is restricted to owners of real estate, renters of real estate, and persons paying a tax on incomes assessed at not less than \$1200 a year. A man may be earning only laborer's wages, but if he rents one of the little cottages which may be had for a few dollars a month in Toronto, he has a vote, but others who may live in the house, have no vote unless qualified as individual rate-payers. It will be seen that these restrictions exclude from municipal elections the herds of voting cattle in which our ward politicians traffic,—which business is the potent source of the naturalization frauds so frequently occurring. On the other hand, in all elections to office under the general government manhood suffrage prevails, so that some persons who cannot vote in municipal elections may now vote, and some persons who may vote in municipal elections cannot now vote. In the United States questions of representation are not treated with the care and discrimination which the proper working of representative institutions requires, and the government of municipal corporations is circumstanced as the government of business corporations would be if casual interlopers were allowed to vote as well as shareholders. The strength of this factor of corruption is, however, I think, usually exaggerated, and even with such inequitable conditions of municipal suffrage as generally exist, sound principles of organization would give a healthy tone to local government.

A far more serious condition remains to be considered, involving interests of greater importance even than integrity of administration in municipal affairs. The essential function of a mu-

nicipal corporation is business administration; it has no more direct connection with politics than any other corporation. Civil rights emanate from State authority, and their protection devolves upon State authority. In order that the exercise of the police power of the State shall be in sympathetic accord with the needs and aspirations of the community, it is necessary that it shall in some effective way be connected with municipal administration. This is usually accomplished elsewhere by providing for municipal representation in the organization and direction of the police force, but State control is never surrendered, and is usually established as a branch of judicial authority. For instance, in Toronto the board of police commissioners is composed of the presiding judge of the judicial district, the presiding judge of the police court, and the mayor by virtue of his office. Thus the control always rests with an independent, permanent judiciary, but the city government is in a position to supervise expenditure and express its views, to which great weight is given by the fact that the city pays the bills, so that the approval and good will of the municipal authorities are of high importance. In organization and control the police force is as detached from politics as the regular army is in this country. It is a permanent force, under regular discipline, and thus acquires a professional bearing, one of the marks of which is the trained civility of behavior which strikes every visitor to an English community.

In the United States, the State has generally surrendered the police power to local control, so that municipal elections do not simply involve the question, How shall your municipal business be conducted? but also the question, How much enforcement of law do you want, and will you have hot or cold what you do want? Hence municipal elections often have very little to do with municipal government, but are really a struggle to reach and use the police power for some special purpose. Such conditions are full of incitement to fanaticism on the one hand and vice on the other. The fanatics will subordinate every other issue to their desire to use the police power to impose their ideals of conduct upon the community. At the same time criminals and law-breakers are incited to organize as a class interest in politics. As that interest is always active, and since opportunities of minority control over public action now abound, so that any interest getting control of a council committee or confederated with some important administrative office can hold up the

public business, it is in a position to extort favor, and hence we have the institution known as "the pull," or the intervention of political influence in behalf of privileged offenders, often taking the shape of a systematic protectorate of vice and crime. The stream of corruption thus generated flows across the field of municipal government and defiles its character, but its source lies outside, and it cannot be altogether excluded by measures of municipal scope. All that can be expected is that its influence will be diminished and the effect mitigated by a proper organization of municipal government. The truth is that we are here confronted by a problem of greater magnitude,—namely, the general corruption of State authority and the decay of public justice. Disturbance of municipal administration is but a minor phase of results from these conditions. Their true virulence is more clearly manifest in the appalling increase of crime, the growth of the spirit of lawlessness, and the extent to which lynch law has superseded the official administration of justice. To elucidate that problem it would be necessary to trace stage by stage the decomposition of authority through the multiplication of elective offices and the abandonment of the judicial functions of government to local discretion. In a systematic study of cause and effect the fact would appear that the growth of the boss system in State and local government is as distinctly a reparative process in the social organism as was the rise of feudalism, both alike conforming to the same general principles; but this fascinating field of scientific study extends beyond the limits of our present subject.

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